

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DANIEL DAUWALDER,  
Plaintiff,  
v.  
J. ATHERTON, et al.,  
Defendants.

Case No.: 1:24-cv-00523-JLT-SKO

**FINDINGS AND RECOMMENDATIONS TO  
DISMISS CERTAIN CLAIMS**

**14-DAY OBJECTION PERIOD**

Plaintiff Daniel Dauwalder is proceeding pro se in this civil rights action pursuant to 42 U.S.C. section 1983.

**I. INTRODUCTION**

Following screening of Plaintiff's complaint, the Court found Plaintiff stated plausible Eighth Amendment excessive force claims against Defendants Atherton and Perez, and deliberate indifference to serious medical needs claims against Defendants Davydov and Garmendia; however, Plaintiff failed to allege any other cognizable claim. (Doc. 7 at 3-12.) Plaintiff was directed to do one of the following: (1) to notify the Court in writing that he did not wish to file a first amended complaint and was willing to proceed only on the Eighth Amendment excessive force claims against Defendants Atherton and Perez and deliberate indifference to serious medical needs claims against Defendants Davydov and Garmendia; the remaining claims against any defendant to be dismissed; or (2) to file a first amended complaint curing the deficiencies

1 identified by the Court; or (3) to file a notice of voluntary dismissal. (*Id.* at 13-14.)

2 On October 21, 2024, Plaintiff filed a notice indicating he was “electing to proceed  
3 forward w/cognizable claims ...” as identified in the Court’s First Screening Order. (*See* Doc. 9.)

4 **II. DISCUSSION**

5 For the reasons set forth in the Court’s First Screening Order (Doc. 7) issued September  
6 19, 2024, the Court will recommend this action proceed only on Plaintiff’s Eighth Amendment  
7 excessive force claims against Defendants Atherton and Perez and deliberate indifference to  
8 serious medical needs claims against Defendants Davydov and Garmendia, and that the remaining  
9 claims be dismissed.

10 **III. CONCLUSION AND RECOMMENDATIONS**

11 Accordingly, the Court **RECOMMENDS** that:

- 12 1. This action **PROCEED** *only* on Plaintiff’s Eighth Amendment excessive force claims  
13 against Defendants Atherton and Perez and deliberate indifference to serious medical  
14 needs claims against Defendants Davydov and Garmendia; and  
15 2. Any remaining claims in Plaintiff’s complaint against any defendant be **DISMISSED**.

16 These Findings and Recommendations will be submitted to the United States District  
17 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). **Within 14 days**  
18 after being served with a copy of these Findings and Recommendations, a party may file written  
19 objections with the Court. Local Rule 304(b). The document should be captioned, “Objections to  
20 Magistrate Judge’s Findings and Recommendations” and **shall not exceed fifteen (15) pages**  
21 without leave of Court and good cause shown. The Court will not consider exhibits attached to  
22 the Objections. To the extent a party wishes to refer to any exhibit(s), the party should reference  
23 the exhibit in the record by its CM/ECF document and page number, when possible, or otherwise  
24 reference the exhibit with specificity. Any pages filed in excess of the fifteen (15) page limitation  
25 may be disregarded by the District Judge when reviewing these Findings and Recommendations  
26 under 28 U.S.C. § 636(b)(1)(C). A party’s failure to file any objections within the specified time

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1 may result in the waiver of certain rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839  
2 (9th Cir. 2014).

3  
4 IT IS SO ORDERED.

5 Dated: **October 23, 2024**

*/s/ Sheila K. Oberto*  
UNITED STATES MAGISTRATE JUDGE